IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 177 OF 2007
WITH
CIVIL APPLICATION NO. 303 OF 2007
IN
CIVIL APPLICATION NOS. 1916 AND 1554 OF 2007
IN
WRIT PETITION NO. 3079 OF 2006

M/s. Raptakos Brett & Co. Ltd.,)
having its factory at Plot No. 100/2, MIDC,)
Dhatav, Roha, Dist. Raigad.)...Appellant

versus

Workmen employed under it represented)
by Shramik Sena, Khairne (Bonkode))
Thane-Belapur Road, New Bombay.)..Respondent

Mr. J.P. Cama, Senior Advocate, instructed by Mr. Avinash K. Jalisatgi, for the appellant.

Mr. S.S. Pathak with Mr. T.R. Yadav for the respondent.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : September 27, 2007
Judgment delivered on: September 29, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

This appeal is directed against the order dated August 10, 2007, passed by the learned single Judge in Civil Application Nos. 1554 of 2007 and 1916 of 2006. The first application was filed on behalf of the workmen seeking a direction to the respondents in the petition to provide regular wages and other benefits which were paid to other employees working with the respondent Company while the latter was filed for claiming wages payable under Section 17B of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). On both these applications, the following relief was granted to the workmen.

(i) As the Company has decided to reinstate the workmen instead of paying dues u/s 17B of the Industrial Disputes Act, the workmen shall be paid wages at par with unskilled permanent workmen or the statutory minimum wages whichever is higher, from the date of this order.

(ii) If no work is provided to the workmen by the employer, they shall be paid wages @ Rs. 2,500/- per month.

(iii) These wages shall be paid by the employer and accepted by the workmen without prejudice to their rights and contentions in the petition.

(iv) The arrears payable to the workmen on account of non-payment of wages @ Rs. 2500/- per month, when work was not provided to them, after the order of this Court dated 29.8.2006, shall be paid within a period of four weeks from today.

13. Civil Applications are disposed of accordingly."

2. The correctness of the above order is challenged on behalf of the management in the present appeal primarily on the ground that the learned Judge could not have, by an interim order, granted higher wages than the minimum wages payable to the workmen. The order also protected the interest of the workmen in a situation where a workman was not granted work. It may be noticed that by an order dated 29th August, 2006, passed in Civil Application No. 1916 of 2006, a learned single Judge of this Court has directed that the rate of wages payable to such unskilled workmen shall be decided at a later stage. The order, according to the appellant, grants impermissible benefits to the workmen and has prejudiced the interest of the management as they have been directed to pay the wages equivalent to a permanent workman who might have already put in large number of years of service. Thus the order is stated to have visited the appellant with adverse consequences.

3. The learned counsel appearing for the respondent relied upon the judgments of the Supreme Court in the cases of (i) *Food*

Corporation of India vs. *Shyamal K. Chatterjee and others,* [2000 (87) FLR 677] and (ii) *Regional Authority, Dena Bank and another* vs. *Ghanshyam*, 2001 (3) L.L.N. 30, to contend that the workmen would be entitled to equal pay for equal work and as such the direction passed by the learned single Judge is in accordance with law. It is also the contention of the respondents that the Court can grant higher wages than the minimum wages or the last drawn wages payable to the workmen in an application under Section 17-B of the Act. Since the workmen had also filed another application for being granted regular benefits, there was all the more reason for the Court to grant such a relief. On the other hand, according to the appellant, while relying upon the same judgement in the case of Dena Bank (supra), it is stated that the Court has jurisdiction to grant higher amounts but such regular wages cannot be granted at an interim stage and the matter could be adjudicated along with the writ petition.

4. There is no doubt that even in the case of Dena Bank, the Supreme Court had clearly stated that the High Courts or the Supreme Court could grant better benefits than contemplated under the provisions of Section 17-B of the Act and in a given case higher wages could be awarded, but the interest of the employer should also be

protected while passing an order under Section 17-B of the Act. There is no obligation on the part of the workman to repay the wages paid to him under Section 17-B of the Act. The cumulative effect of the above settled position of law is that all the directions passed by the learned single Judge except direction (i) of the impugned order hardly call for any interference. Even the first direction of the above reproduced order could be moulded so as to balance the equities between the parties as well as to protect the interest of the management. The modified direction (i) of the learned single Judge reads as under:

> "As the Company has decided to reinstate the workmen instead of paying dues u/s 17B of the Industrial Disputes Act, the workmen shall be paid **last drawn wages** or the statutory minimum wages whichever is higher, from the date of this order."

5. With the above modification, the appeal is disposed of, while leaving the parties to bear their own costs.

6. The direction contained in the present appeal is without prejudice to the rights and contentions of the parties and shall be subject to the final determination of the writ petition.

7. In view of the order passed in the main appeal, Civil Application No. 303 of 2007 does not survive and is accordingly disposed of.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.

8. The learned counsel appearing for the respondent has stated that he was given liberty to file copies of the citations relied upon by him by today. This is somewhat unusual, but, in any case, we have heard the learned counsel for the respondent. Even today, he has argued before the pronouncement of the judgment.

9. In the judgment, we have modified clause (i) of the impugned order and rest of the order of the learned single Judge has been maintained. Now it is contended before us that even that order should be reviewed on the ground that the respondent has been reinstated by the appellant and that he should be paid on parity with the regular workers. In support of this contention, he relies upon the judgment of the Supreme Court in Dena Bank (supra), which judgment has already been discussed by us in the order passed today. We may also further

notice that the argument of the learned Counsel for the respondent is misconceived inasmuch as there is no reinstatement by the appellant. The appellant, in response to the application under Section 17-B of the Act, has accepted to pay the wages, if they provide work to the workmen and if the workmen are not provided with any work, the learned single Judge has already fixed the wages of Rs. 2,500/- to be paid irrespective of the stand of the employer whether the workmen is provided with work or not. This certainly is the exception being taken voluntarily or otherwise by the employer. The workmen have not challenged this part of the order of the learned single Judge and in fact even before us.

10. In the circumstances, no other directions are required to be passed.